Supreme Court, U.S.
FILED

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No. 02-1481 MAR 17 2003

In The

Supreme Court of the United States

MARK CHRISTOPHER CORCORAN;
NANCY LOUISE CORCORAN,

Petitioners,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Lacking any place for argument administratively before the IRS, the Tax Court, and even before the 9th Circuit Court of Appeals, as the IRS, the Tax Court, and the 9th Circuit Court of Appeals' Three Judge panel have ruled, how is the determination of tax liability in the present day United States of America justified against the U.S. Supreme Court in Morgan v. United States, supra (1938)?

2. Are the Lower Courts, including the U.S. Tax Court, bound to the determinations of the U.S. Supreme Court requiring specific analysis and address of actual arguments of law/speech of individuals prior to determination of the Courts to penalize and/or sanction speech as set forth on government forms for making contentions of factual nature?

3. Does Justice require that the Lower Courts, including the U.S. Tax Court, hear the specific speech and legal arguments of the individuals appearing and appealing to them?

4. Is it within the definition of Justice for the Courts to see speech as unprotected speech by ignoring the actual speech, or injecting the speech of others, or misconstruing the speech before it, in order to justify ignoring the speech before it as being frivolous or merely appearing to be frivolous?

5. Should U.S. Citizens use the rules found in 26 U.S.C. Section 861(b), and the related regulations beginning at 26 C.F.R. Section 1.861-8, to determine their taxable domestic income?

6. If a U.S. Citizen lives and works exclusively within the 50 states, and receives all of his income from within the 50 states, do 26 U.S.C. Section 861(b) and 26 C.F.R. Section 1.861-8 show such income to be taxable?

QUESTIONS PRESENTED FOR REVIEW – Continued

7. Should one refer to 26 C.F.R. Section 1.861-8T(d)(2)(ii)(A) to determine whether the "items" of income he receives (such as compensation, interest, rents, dividends, etc.) are excluded for federal income tax purposes?

8. What is the purpose of the list of non-exempt types of income found in 26 C.F.R. Section 1.861-8T(d)(2)(iii), and why is the income of the average American not on that list?

9. What types of income (if any) are not exempted from taxation by any statute, but are nonetheless "excluded by law" (not subject to the federal income tax) because they are, under the Constitution, not taxable by the federal government?

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PETITION FOR WRIT OF CERTIORARI

Petitioners, Mark C. Corcoran and Nancy L. Corcoran ("Petitioners"), request that a writ of certiorari issue to review the judgement of the United States Court of Appeals for the Ninth Circuit in Mark Christopher Corcoran and Nancy Louise Corcoran v. Commissioner of Internal Revenue, Docket No. 02-71577, UNPUBLISHED Memorandum, dated November 12, 2002 and Order Denying Petition for Rehearing En Banc, dated January 7, 2003.

CITATIONS TO OPINIONS BELOW

The opinion of the United States Court of Appeals For The Ninth Circuit affirming the judgement of the United States Tax Court, San Diego, California, dated January 22, 2002, is UNPUBLISHED and is set forth in Appendix 1.

JURISDICTION

Jurisdiction over this case is conferred upon the Supreme Court of the United States by 28 U.S.C. Section 1254, as an appeal from a final judgement of the United States Court of Appeals, which denied Petitioners' Petition for Rehearing En Banc on January 7, 2003 after a panel of that Court issued a judgement on November 12, 2002 affirming an opinion of the Tax Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS

This case involves Title 26 U.S.C. Sections 61 and 861, and their implementing regulations setting forth a specific and novel argument of law pertaining to sources of gross income which show Petitioners' income to be "exempt income". This case involves the use and application of the word "source" as reflected in the statutes and treasury regulations "from whatever source derived" to have a defined meaning. This case involves requirements of law and due process by the U.S. Congress in the Internal Revenue Reform and Restructuring Act of 1998 (RRA of 1998) and codified at 26 U.S.C. Section 7811(a)(3).

STATEMENT OF THE CASE

The fact is that the Definition of gross income at 26 U.S.C. Sec.61 and the regulations for 26 U.S.C. Sec.861 have both remained substantively unchanged for over 80 years, and thus the connection that exists between the substance of the two is a matter of clear statutory law at Sec.22(g) of the 1939 Internal Revenue Code, whose intent has also been unchanged for over 80 years.

Plainly, Petitioners' argument has not been specifically addressed or ruled upon by any court to be frivolous, and in recent proceedings in the U.S. District Court of the Middle District of Pennsylvania, on November 4, 2002 the U.S. Department of Justice stated that there is no case law for it to rely upon in *United States of America v. Thurston Paul Bell* to support any claim of frivolity. The government must provide a careful analysis of the Petitioners' argument and speech showing specifically how it is

"frivolous" before speech, like the legal argument of tax law by the Petitioners, can be penalized and/or suppressed:

> " . . . we hold that when the constitutional right to speak is sought to be deterred by a . . . taxing program due process demands that the speech be unencumbered until the State comes forward with sufficient proof to justify its inhibition. The State clearly has no such compelling interest at stake to justify a short-cut procedure which must inevitably result in suppressing protected speech." *Speiser v. Randall*, 357 U.S. 513, 529 (1958).

It appears that the Ninth Circuit Judges only read the Respondent's Brief and ignored the Petitioners' Briefs contentions regarding the facts and arguments of law and case law. The Judges stated in their MEMORANDUM that Petitioners "argue that income earned by United States citizens within the United States is not 'gross income' subject to federal taxation. Specifically, they contend that wages, unemployment compensation, and interest that they received are not sources of taxable income." These are false statements of the Petitioners' arguments of fact and law. Petitioners understand that there are definitely circumstances where U.S. Citizens earn gross income from within the U.S. that are taxable, such is proved by 26 C.F.R. §§ 1.861-8(f)(1)(i), 1.861-8T(d)(2)(iii)(D), 1.861-8(f)(1)(vi)(E) to (H) and (L) and (M).

The consciences of Petitioners are shocked by this gross misstatement of the argument of the Respondent by the Lower Courts, as they have made no such argument as "income earned by United States citizens within the United States is not "gross income" subject to federal taxation."

Petitioners are also shocked by the apparent misreading of the law by this Court for it ruled as if " . . . wages, unemployment compensation, and interest . . . " are sources of income, when in fact that law at 26 U.S.C. §61(a) and 26 C.F.R. §1.861-8(a)(3) and (4) reveal that such things are "items" of gross income which must come from a specific source which is to be determined pursuant to 26 U.S.C. §861(b) and its regulations 26 C.F.R. §1.861-8 et. seq.

Petitioners maintain that no inclusion of their remuneration as "gross income", can be made without first the application of 26 C.F.R. §1.861-8 et. seq. for the determination of the "item of gross income" being from a specific source (26 C.F.R. Sec.1.861-8(f)(1)) as is set forth by the U.S. Source Determination process (26 C.F.R. Sec.1.861-8(a)(4)).

Petitioners cannot concede that their application of the words of the law in 26 C.F.R. Sec.1.861-8 et. seq. can in any way be construed to be a disregard of applicable regulations that govern ALL U.S. Sources and also contain a definition of "exempt income" that is within Subtitle A to which 26 U.S.C. Sec.61(a) is wholly subject to and pursuant to the first seven words of that law. This Court has ignored over 100 years of Federal Statutory construction rulings that words in the statutes are to be given their proper significance and not rendered void, and thus the requirement of standing law that has been substantially unchanged for over 80 years pursuant to *Chevron Corporation v. Commissioner*, 104 T.C. 719 CCH 50,720, at 4266, Docket Number 24954-90 (June 27, 1995), citing *United States v. Correll*, 389 U.S. 299 (1967); *Helvering v. Winmill*, 305 U.S. 79, 83 (1938); *Fribourg Nav. Co. v. Commissioner*, 383 U.S. 272, 283 (1966); *Commissioner v.*

Glenshaw Glass Co., 348 U.S. 426 (1955); and *Southern Pacific v. Lowe*, 247 U.S. 330, 335 (1918), when it ignored the connection of the list of U.S. Sources at 26 C.F.R. Sec.1.861-8(f)(1) and items of gross income as set forth in 1.861-8(a)(3), and their contentions to the definition of "exempt income" at 26 C.F.R. Sec.1.861-8T(d)(2)(ii)(A), 26 C.F.R. Sec.1.861-8(a)(4) and 1.861-8(b)(1), respectively.

Petitioners' argument has basis in the tax code and is not legally frivolous. The 9th Circuit Court of Appeals cited that gross income is defined "very broadly as 'all income from whatever source derived.'" See *Coady v. Commissioner*, 213 F.3d 1187, 1190 (9th Cir. 2000) (quoting 26 U.S.C. Sec.(a)). *Coady v. Commissioner*, supra, deals with costs and contingent legal fees. If the Justices continued reading the paragraph they cited, they would read "very broadly as 'all income from whatever source derived' unless the taxpayer can demonstrate '**specific exclusions created by the Code**,'" *Coady*, supra, and thus justified the *Coady* ruling with *Southern Pacific*, supra, which states that not all income is gross income. The 9th Circuit Court of Appeals would have then also justified the entire gross income determination process as asserted in the argument of the Petitioners as *Glenshaw*, supra, states that the effect of § 22 of the I.R.C. of 1939 is unchanged, and thus the connection between the definition of gross income and U.S. Sources at §22(g) is still in effect to this day.

The Supreme Court of the United States has said that the term "whatever source derived" in the 16th Amendment didn't really mean WHATEVER source derived (meaning there are limits on what the Internal Revenue Service can tax). "The Court has hitherto consistently held that a literal reading of a provision of the Constitution

which defeats a purpose evident when the instrument is read as a whole, is not to be favored . . . [and one of the examples they give is. . . .] 'From whatever source derived,' as it is written in the Sixteenth Amendment, does not mean from whatever source derived." *Wright v. United States*, 302 U.S. 583 (1938).

"To enable Congress to reach all TAXABLE income more conveniently and effectively than would be possible as to much of it if an apportionment among the states were essential, the Sixteenth Amendment was proposed and ratified. In other words, the purpose of the amendment was to eliminate all occasion for such an apportionment because of the source from which the income came, – A CHANGE IN NO WISE AFFECTING THE POWER TO TAX but only the mode of EXERCISING it." *Evans v. Gore*, 253 U.S. 245 (1920). The court mentions that the governor of New York "expressed some apprehension lest [the 16th Amendment] might be construed as EXTENDING THE TAXING POWER TO INCOME NOT TAXABLE BEFORE," *Evans v. Gore*, supra, but that those who proposed the amendment described its purpose, proving that was not the case. "Thus the genesis and words of the amendment unite in showing that it DOES NOT EXTEND THE TAXING POWER TO NEW OR EXCEPTED SUBJECTS, but merely removes all occasion otherwise existing for an apportionment among the states of taxes laid on income, whether derived from one source or another." . . . And "It is not, in view of recent decisions, contended that [the 16th Amendment] rendered anything taxable as income that was not so taxable before." *Evans v. Gore*, supra.

The 9th Circuit Court of Appeals is in error in the face of the established history of this law by determining that it is correct to treat all money received by Petitioners as

"gross income" as defined under 26 U.S.C. Sec.61(a), and completely overlooked the Petitioners' argument and application of an exclusionary provision of Subtitle A of the Internal Revenue Code. The focal points of law of Petitioners' argument of law is 26 C.F.R. Sections 1.861-8(a)(4) and 1.861-8T(d)(2)(ii)(A); they are regulations of a Statute. 26 U.S.C. §861(b) as contained within Subtitle A, and shown to be effectively unchanged for over 80 years and connected to §61(a) since at least 1939.

There is merit to Petitioners' contentions that they were denied their administrative due process rights and that the notice of deficiency is invalid. See *Wilcox v. Commissioner*, 848 F.2d 1007, 1008 (9th Cir. 1988) ("[F]ailing to provide a taxpayer with an administrative hearing does not violate due process."). See *Nunley v. Commissioner*, 758 F.2d 372, 373 (9th Cir. 1985) (citing *Cafeteria & Restaurant Workers, Local 473 v. McElroy*, 367 U.W. 886, 894-95, 81 S.Ct. 1743, 1748-49, 6 L.Ed.2d 1230 (1961). *Cafeteria & Restaurant Workers, Local 473 v. McElroy* was about a "cook at a cafeteria at the Naval Gun Factory in Washington, D.C., which was engaged in the development of secret weapons." "Under the explicit authority of Article 0734 of the Navy Regulations, the Superintendent of the Gun Factory had authority to exclude the cook from the Gun Factory upon the Security Officer's determination that she failed to meet the security Requirements." "The summary exclusion of the cook from the premises of the Gun Factory, without a hearing and without advice as to the specific grounds for her exclusion, did not violate the Due Process Clause of the Fifth Amendment." The 9th Circuit Court of Appeals is trying to state that the Petitioners tax case, which is supposed to be a proceeding about ascertaining truth and fact under the law prior to deprivation, can

be treated the same as security requirements in regards to the development of secret weapons. The established procedures of the Internal Revenue Service, as stated in the Internal Revenue Manual, have now been made requirements of law and due process by the U.S. Congress in the Internal Revenue Reform and Restructuring Act of 1998 (RRA of 1998) and codified at 26 U.S.C. §7811(a)(3) as just cause for the removal and reversal of I.R.S. Claims. The right of the individual to make a defense against evidence against him when before the I.R.S. Examinations office is as well indicated in the Congressionally mandated (TAMRA 1988) Notice 782, and the regulations at 26 C.F.R. §601.105.

Since the enactment of the RRA of 1998 § 1102(c), a NEW LAW has been set in place by the U.S. Congress, in that the procedures of the IRS, from the Statutes all the way down to the Internal Revenue Manual must be followed or the claims of the government are to be invalidated. The 9th Circuit Court of Appeals was asked to rule on this new law, and failed.

The 9th Circuit Court of Appeals also cited *Kantor v. Commissioner,* 998 F.2d 1514, 1521 (9th Cir. 1993) ("[W]e will not look behind a deficiency notice to question the . . . procedures leading to a determination.") (internal quotation omitted). *Kantor v. Commissioner*, supra, is about a "Question of whether research expenditures made by a partnership in order to develop a new technology were incurred in connection with its own trade or business". "The Tax Court held they were not." "We recognized an exception to this rule in *Scar v. Commissioner*, 814 F.2d 1363, 1368-70 (9th Cir. 1987), where **the notice of deficiency revealed on its face that a determination had not been made using the taxpayer's return." "We**

must consider the merits of appellants' argument." *Kantor v. Commissioner*, supra, is distinguished from this matter as it has no relationship to Petitioners' argument of the application of the U.S. Source Rules. Petitioners did file for 1998 a valid 1040 tax return and used valid IRS forms to make contentions of a factual nature – forms 4852 and 8275 that stated reasons why they filed as they did. The Ruling of the three Judge Panel of the 9th Circuit has made it so that no person in the States governed by the rulings of the 9th Circuit Court of Appeals can use any government forms 1040, 4852, or 8275 to make contentions of a factual nature at the time of filing a return, before the I.R.S., the Tax Court, or the Ninth Circuit Court of Appeals in order to make a defense against the claims of the government.

This position is inconsistent with the procedures as set forth by the I.R.S., the Acts of the Congress regarding the Administrative due process rights of individuals, and the definition of legitimate process as set forth by the U.S. Supreme Court.

> "The vast expansion of this field of administrative regulation in response to the pressure of social needs is made possible under our system by **adherence to the basic principles that** the legislature shall appropriately determine the standards of administrative action and that in administrative proceedings of a quasi-judicial character the **liberty and property of the citizen shall be protected by the rudimentary requirements of fair play**. *These demand 'a **fair** and open **hearing**,'* – essential alike to the legal validity of the administrative regulation and to the maintenance of public confidence in the value and soundness of this important

> governmental process. Such a hearing has been described as an 'inexorable safeguard.'" *Morgan v. United States,* 304 U.S. 1, 14-15 (1938) (citations omitted); *Detroit Free Press v. Ashcroft*, 303 F.3d 681 (6th Cir. 2002) (italic emphasis added by Circuit Court) (other emphasis added).

Wilcox v. Commissioner, supra, *Kantor v. Commissioner*, supra, and *Larsen v. Commissioner*, 765 F.2d 939, 941 (9th Cir. 1985) are all cases that are dated prior to the passage of the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA of 1998), and in consideration of this relatively NEW LAW, these cases are now distinguished from the specific will of the People of the Unites States of America through an Act of the U.S. Congress. Plainly this new law is the will of Congress to assure the Petitioners the right to have the IRS comport its actions to the established procedures of the IRS for fair and impartial hearing and due process of law prior to the assumption of liability and taking of Petitioners' property by the IRS. This law is so powerful that pursuant to 26 U.S.C. Sec.7811(b)(2)(D) the Taxpayer Advocate Service is given FULL and COMPLETE authority over IRS matters and can order anything done under the Internal Revenue Code be reversed, in the interest of justice to correct irreparable injury.

Pursuant to the change in the law by Congress, which Respondent, the Tax Court, and the Ninth Circuit Court of Appeals have failed to recognize, it appears that the cases of *United States v. Newell*, 578 F.2d 827, 828 (9th Cir. 1978) and *United States ex. rel. Accardi v. Shaughnessy*, 347 U.S. 260, 74 S.Ct. 499, 99 L.Ed. 681 (1954), cited in *United States v. Heffner*, 429 F.2d 809, 811 (1970), are now

certainly applicable to the proceedings and process of the IRS.

Therefore, with new law in place this is certainly a First Impression issue before this Court. There is new law to be interpreted by this Court, as it is the duty of the Courts, and neither the Congress, nor the Executive, to be the final interpreter of the law (*Marbury v. Madison*, 1 Cranch 137 (1803), and all arguments of Respondent on this issue are moot.

Petitioners pray for the reversal of the imposition of sanctions. See *Larsen v. Commissioner*, 765 F.2d 939, 941 (9th Cir. 1985) ("impose a penalty on a taxpayer for maintaining a proceeding primarily for delay or for bringing an action which is frivolous and groundless." *Larsen v. Commissioner, supra*) is distinguished from this case as it is about "disallowance of taxpayer's claimed charitable contributions to the Universal Life Church, Inc.; 'the alleged contributions were a tax avoidance scheme designed to insulate taxpayer's income from tax while using the income allegedly contributed to the Church for personal living expenses" and does not address the argument of law of the Petitioners.

Thus, this claim of frivolity by the Executive and Judicial Branches is in gross error and has now caused irreparable injury to the Petitioners pursuant to *Detroit Free Press*, 303 F.3d 681 (6th Cir.) (August 26, 2002) (citing *Newsom v. Norris*, 888 F.2d 371, 378 (6th Cir. 1989), *Elrod v. Burns*, 427 U.S. 347 (1976).

Respondent's contentions surrounding the claim that Petitioners' claims of violation of process are "frivolous" ignores the reforming of the Tax Laws by the Act of Congress by the enactment of the RRA of 1998, and the

codification of same at 26 U.S.C. Sections 6330(a)(1), 7811(a)(3), and 6201(d). The new laws reveal that the Case law presented by Respondent in its defense is moot, as they cannot address this new law and Act of Congress.

Pursuant to the Federal Courts, in cases such as *Coleman v. Commissioner*, 791 F.2d 68, 71 (7th Cir. 1986) "frivolous" means that it is " . . . contrary to established law. . . . " In light of all of the law presented by the Petitioner in the form of Briefs and the statutory and regulatory history of the law, Petitioners' position is most arguably founded within 80 years of established law, and so arguable that this Court should rule that Petitioners' case is not "frivolous." The Petitioners were denied an oral hearing before the 9th Circuit Court of Appeals just because the three Circuit Judges carelessly labeled this case as "frivolous" because it merely appeared to be unprotected speech, in violation of the ruling of the high court in *Ashcroft v. Free Speech Coalition*, 535 U.S. ____, 122 S.Ct. 1389, 1440 (2002), *Speiser v. Randall*, 357 U.S. 513, 521 (1958), and *American Library Association, Inc. v. United States*, 201 F.Supp.2d 401, 479 (E.D.Pa. 2002).

REASONS FOR GRANTING THE WRIT

In Petitioners' judgement, material points of fact and law were overlooked in this decision and this proceeding involves questions of exceptional importance including new law to be interpreted by this Court. The Petitioners' have a right to pursue remedy regarding their argument of law through the established Administrative and Judicial Procedures, until such time that their argument of law surrounding 26 C.F.R. Sec.1.861-8(a)(4) and 26 C.F.R.

Sec.1.861-8T(d)(2)(ii)(A) are specifically and adequately addressed in a clear, reasonable, and logical manner that leaves no further room for reasoned debate and argument (the Lower Courts have overlooked this issue completely and failed to address it). This case involves the lack of due process and the denial of an administrative hearing.

QUESTIONS REGARDING DETERMINING TAXABLE INCOME

1) Should U.S. Citizens use the rules found in 26 U.S.C. § 861(b), and the related regulations beginning at 26 C.F.R. § 1.861-8, to determine their taxable domestic income?

2) If those sections of law are not to be used by U.S. Citizens for determining their taxable domestic income, why do the regulations mention or allude to U.S. Citizens no less than 3 times, saying who should or should not use those sections for that.

> *Reason for first two questions:* The regulations under 26 U.S.C. § 861(b) (26 C.F.R. § 1.861-8 and following) begin by stating that Sections 861(b) and 863(a) state in general terms "*how to determine taxable income of a taxpayer from sources within the United States*" after gross income from the U.S. has been determined. (The regulations then say that Sections 862(b) and 863(a) describe how to determine taxable income from *outside* of the U.S.) Section 1.861-1(a)(1) of the regulations confirms that "*taxable income from sources within the United States*" is to be determined in accordance with the rules of 26 U.S.C. § 861(b) and 26 C.F.R. § 1.861-8. (See also 26 C.F.R. §§ 1.862-1(b), 1.863-1(c).)

3) If a U.S. citizen lives and works exclusively within the 50 states, and receives all of his income from within the 50 states, do 26 U.S.C. § 861(b) and 26 C.F.R. § 1.861-8 show such income to be taxable?

> *Reason for question*: Section 217 of the Revenue Act of 1921, statutory predecessor of 26 U.S.C. § 861 and following, stated that income from within the U.S. was taxable for foreigners and for U.S. citizens and corporations deriving most of their income from federal possessions (but did *not* say the same about the domestic income of most Americans). The regulations under the equivalent section of the 1939 Code (e.g. §§ 29.119-1, 29.119-2, 29.119-9, 29.119-10 (1945)) showed the same thing. The current regulations at 1.861-8 still show income to be taxable only when derived from certain "*specific sources and activities*," which, concerning *domestic* income, still relate only to foreigners and certain Americans receiving income from federal possessions (26 C.F.R. §§ 1.861-8(a)(1), 1.861-8(a)(4), 1.861-8(f)(1)).

4) Should one refer to 26 C.F.R. § 1.861-8T(d)(2)(ii)(A) to determine whether the "items" of income he receives (such as compensation, interest, rents, dividends, etc.) are excluded for federal income tax purposes?

> *Reason for question*: The regulations (26 C.F.R. § 1.861-8(a)(3)) state that a "*class of gross income*" consists of the "items" of income listed in 26 U.S.C. § 61 (e.g. compensation, interest, etc.). The regulations (26 C.F.R. §§ 1.861-8(b)(1)) then direct the reader to "paragraph (d)(2)" of the section, which provides that such "*classes of gross income*" may include some income which is *excluded* for federal income tax purposes.

5) What is the purpose of the list of non-exempt types of income found in 26 C.F.R. § 1.861-8T(d)(2)(iii). and why is the income of the average American *not* on that list?

> *Reason for question*: After defining "*exempt income*" to mean income which is exempt, eliminated, or excluded for federal income tax purposes (26 C.F.R. § 1.861-8T(d)(2)(ii)), the regulations give a list of types of income which are *not* exempt (i.e. which *are* subject to tax), which includes the domestic income of foreigners, certain foreign income of Americans, income of certain possessions corporations, and income of international and foreign sales corporations, but which does *not* include the domestic income of the average American (26 C.F.R. § 1.861-8T(d)(2)(iii)). The fact of such income not being included within the law at this point makes a strong appearance that such income is excluded from the law.

6) What types of income (if any) are *not* exempted from taxation by any *statute*, but are nonetheless "*excluded by law*" (not subject to the federal income tax) because they are, under the Constitution, not taxable by the federal government?

> *Reason for question*: Older income tax regulations defining "gross income" and "net income" said that neither income exempted by statute "*or fundamental law*" were subject to the tax (§ 39.21-1 (1956)), and said that in addition to those types of income exempted by *statute*, other types of income were exempt because they were, "*under the Constitution, not taxable by the Federal Government*" (§ 39.22(b)-1 (1956)).

The proceeding 6 questions demand answers in order to decide this case.

QUESTION REGARDING MEANINGFUL ADMINISTRATIVE PROCESS

Lacking any place for argument administratively before the IRS and the Tax Court, and even before the 9th Circuit Court of Appeals, as the IRS, the Tax Court and the Three Judge panel have ruled, how is the determination of tax liability in the present day United States of America justified against the U.S. Supreme Court in *Morgan v. United States,* supra (1938)?

> *Reason for this question:* The proceedings before the IRS are supposed to be for the purposes of correctly and truthfully ascertaining a tax liability. It is otherwise well known that fair and meaningful process makes administrative procedures justified under the American system of law, except in the area of tax law according to the three judge panel.

The proceeding question demands an answer in order to decide this case.

QUESTIONS REGARDING FIRST AMENDMENT RIGHT TO BE HEARD

Are the Lower Courts, including the U.S. Tax Court, bound to the determinations of the U.S. Supreme Court requiring specific analysis and address of actual arguments of law/speech of individuals prior to determination of the Courts to penalize and/or sanction speech as set

forth on government forms for making contentions of factual nature?

> *Reason for this Question:* The Supremacy Clause of the United States Constitution states that the decisions of the U.S. Supreme Court are the law of the land. The decisions of the lower courts in this case appear to conflict heavily with the law of the land, and if not there must be some explanation as to how it is that the First, Fifth, and Sixth Amendments do not apply to the issue of tax law and thus there is a double standard in regards to this special area of law.

Does Justice require that the Lower Courts, including the U.S. Tax Court, hear the specific speech and legal arguments of the individuals appearing and appealing to them?

> *Reason for this Question:* The Supremacy Clause of the United States Constitution states that the decisions of the U.S. Supreme Court are the law of the land. The decisions of the lower courts in this case appear to conflict heavily with the law of the land, and if not there must be some explanation as to how it is that the First and Fifth Amendments do not carry any weight to the issue of tax law and thus there is a double standard in regards to this special area of law.

Is it within the definition of Justice for the Courts to see speech as unprotected speech by ignoring the actual speech, or injecting the speech of others, or misconstruing the speech before it, in order to justify ignoring the speech before it as being frivolous or merely appearing to be frivolous?

Reason for this Question: The Supremacy Clause of the United States Constitution states that the decisions of the U.S. Supreme Court are the law of the land. The decisions of the lower courts in this case appear to conflict heavily with the law of the land, and if not there must be some explanation as to how it is that the First Amendment does not carry any weight to the issue of tax law and thus there is a double standard in regards to this special area of law.

CONCLUSION

Petitioners pray that this Court GRANT A WRIT OF CERTIORARI to review the judgement of the Lower Courts and deal with the U.S. Source statutes as argued by the Petitioners, the responsibility of the Executive and Judicial Branches to make specific analysis of the Petitioners' arguments of law and the first impression issue of the RRA of 1998 affirming the right of Petitioners and all Citizens of the U.S. to meaningful due process of law before the Internal Revenue Service.

Petitioners Mark Christopher Corcoran and Nancy Louise Corcoran appeal a judgment in favor of Respondent – Commissioner of Internal Revenue issued by the United States Tax Court ordering Petitioner to pay an income tax deficiency in the amount of $4,155.00, an accuracy-related penalty under 26 U.S.C. §6662(a) in the amount of $831.00, and a penalty awarded to the United States pursuant to 26 U.S.C. §6673(a)(1) in the amount of $2,000.00.

Petitioners pray this Court REVERSE THE DECISION AND ORDER of Tax Court on the issues of the

deficiency and additions to tax, supra, and REMAND for further proceedings within the fair and meaningful administrative procedures of the Internal Revenue Service with full and careful analysis and consideration of the specifics of their argument of law in the First issue. Also, Petitioners pray this Court REVERSE Tax Court's imposition of a frivolous lawsuit penalty as they have proved their issues to be consistent with established law.

Petitioners pray this Court REVERSE the MEMORANDUM submitted by 9th Circuit Judges: SNEED, SKOPIL, and FARRIS

Submitted faithfully to the Supreme Court of the United States this 17th day of March, 2003:

Respectfully submitted,

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NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MARK CHRISTOPHER CORCORAN; NANCY LOUISE CORCORAN, Petitioners-Appellants, v. COMMISSIONER OF INTERNAL REVENUE, Respondent-Appellee.	C.A. No. 02-71577 T.C. No. 2947-01 **MEMORANDUM**[*] (Filed Nov. 12, 2002)

Appeal from a Decision of the
United States Tax Court
Norman H. Wolfe, Special Trial Judge, Presiding

Submitted September 20, 2002[**]

Before: **SNEED, SKOPIL** and **FARRIS**, Circuit Judges

The Corcorans appeal the Tax Court's determination of an income tax deficiency and the imposition of penalties and sanctions. They argue that income earned by United States citizens within the United States is not "gross income" subject to federal taxation. Specifically, they

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[*] This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by Ninth Circuit Rule 36-3.

[**] This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2). Accordingly, appellants' request for oral argument is denied.

contend that wages, unemployment compensation, and interest that they received are not sources of taxable income. Such an argument has no basis in the tax code and is legally frivolous. Gross income is defined "very broadly as 'all income from whatever source derived.'" *See Coady v. Commissioner*, 213 F.3d 1187, 1190 (9th Cir. 2000) (quoting 26 U.S.C. § 61(a)).

There is also no merit to taxpayers' contentions that they were denied their administrative due process rights or that their notice of deficiency is invalid. *See Wilcox v. Commissioner*, 848 F.2d 1007, 1008 (9th Cir. 1988) ("[F]ailing to provide a taxpayer with an administrative fact finding hearing does not violate due process."); *Kantor v. Commissioner*, 998 F.2d 1514, 1521 (9th Cir. 1993) ("[W]e will not look behind a deficiency notice to question the . . . procedures leading to a determination.") (internal quotation omitted).

Finally, we affirm the imposition of sanctions. The Tax Court is entitled to "impose a penalty on a taxpayer for maintaining a proceeding primarily for delay or for bringing an action which is frivolous and groundless." *See Larsen v. Commissioner*, 765 F.2d 939, 941 (9th Cir. 1985).

AFFIRMED.

T.C. Memo. 2002-18

UNITED STATES TAX COURT

MARK CHRISTOPHER AND NANCY LOUISE CORCORAN, Petitioners v. COMMISSIONER OF INTERNAL REVENUE, Respondent

Docket No. 2947-01. Filed January 18, 2002.

Mark Christopher Corcoran, pro se.

Timothy F. Salel, for respondent.

MEMORANDUM OPINION

WOLFE, – *Special Trial Judge*: Respondent determined a deficiency of $4,155 in petitioners' 1998 Federal income tax. In the answer to the petition respondent asserted an accuracy-related penalty of $831 pursuant to section 6662(a). At trial respondent filed a written motion for a penalty under section 6673(a)(1). All section references are to the Internal Revenue Code in effect for 1998.

The issues for decision are: (1) whether petitioners' compensation for services, unemployment compensation, and interest received during 1998 constitute gross income; (2) whether petitioners are liable for an accuracy-related penalty under section 6662(a); and (3) whether imposition of a penalty under section 6673(a) is appropriate under the circumstances of this case.

Some of the facts have been stipulated and are so found. The stipulation of facts and the accompanying exhibits are incorporated herein by this reference. Petitioners resided in Fallbrook, California, when they filed their petition.

Petitioners are well-educated people. Both graduated from California State University at Long Beach. Mark Corcoran (petitioner) received a bachelor's degree in business administration with an emphasis in accounting. Petitioner Nancy Corcoran (Mrs. Corcoran) holds a master's degree in education. Petitioner is an accountant for Global Outdoors, Inc. Mrs. Corcoran teaches in the San Diego Catholic school system.

During 1998, petitioner received compensation for services of $13,269 and $5,773 from All American Homes and Empire Marine, Inc., respectively. Petitioner also received unemployment compensation of $168 from the California Employment Development Department. Mrs. Corcoran received $25,761 from the Roman Catholic Bishop of San Diego with respect to her teaching job. Petitioners also received interest on their bank account balances. In total, petitioners received compensation for services of $44,803, unemployment compensation of $168, and interest of $426. Petitioners jointly filed a 1998 Federal income tax return. They filled in lines 7 through 56 of, their Form 1040, U.S. Individual Income Tax Return, with a zero on each line and claimed a refund of $937.90. Petitioners attached to their tax return a Form W-2, Wage and Tax Statement, reporting wages of $25,761 from Mrs. Corcoran's employer. Respondent treated the $25,761 as if it were properly reported on the tax return.

Petitioners stipulated that they received all the amounts that their employers reported to the Internal Revenue Service on Forms W-2, as wages or compensation paid to them. However, petitioners refused to stipulate that such amounts constitute wages. Petitioners also stipulated that they received all of the unemployment compensation and interest that respondent determined were income.

Petitioners do not challenge the facts on which respondent's determinations are based or respondent's calculation of tax. Rather, petitioners, by selectively analyzing statutes, regulations, and judicial authorities out of context, have reached the conclusion that their compensation for services, unemployment compensation and interest do not constitute gross income.

Petitioners argue: (1) There is no law making petitioners liable for a personal income tax; (2) petitioners have no gross income pursuant to section 861 et seq. concerning gross income from sources within the United States and without the United States; and (3) the notice of deficiency with respect to petitioners' 1998 return is invalid because petitioners allegedly were denied an administrative hearing and because respondent failed to carry the burden of proof at the administrative level.

At the outset we note that petitioners' arguments are without factual or legal foundation. Their contentions are reminiscent of standard tax protester rhetoric. They have presented as exhibits copies of materials apparently prepared and distributed by an organization opposed to compliance with the income tax laws. While petitioners' arguments certainly do not require refutation "with somber reasoning and copious citation of precedent", *Crain v. Commissioner*, 737 F.2d 1417 (5th Cir. 1984), we shall, nevertheless, briefly discuss some of the issues raised.

Section 1 imposes an income tax on the income of every individual who is a citizen or resident of the United States. Sec. 1.1-1(a)(1), Income Tax Regs. Section 61(a) provides that except as otherwise provided in subtitle A (income taxes) gross income includes "all income from whatever source derived," including compensation for

services and interest. Secs. 61(a)(1), (4). Section 85(a) provides that an individual's gross income includes unemployment compensation.

Ignoring these statutory provisions, petitioners argue that their compensation for services, unemployment compensation, and interest do not constitute gross income because these items of income are not listed in section 1.861-8(f), Income Tax Regs. Their argument is misplaced and takes section 1.861-8(f), Income Tax Regs., out of context. The rules of sections 861-865 have significance in determining whether income is considered from sources within or without the United States. The source rules do not exclude from U.S. taxation income earned by U.S. citizens from sources within the United States. See, e.g., *Williams v. Commissioner*, 114 T.C. 136, 138-139 (2000) (rejecting claim that income is not subject to tax because it is not from any of the sources listed in sec. 1.861-8(a), Income Tax Regs.); *Aiello v. Commissioner*, T.C. Memo. 1995-40 (rejecting claim that the only sources of income for purposes of sec. 61 are listed in sec. 861); *Great-West Life Assur. Co. v. United States*, 230 Ct. Cl. 477, 678 F.2d 180, 183 (1982) ("The determination of where income is derived or 'sourced' is generally of no moment to either United States citizens or United States corporations, for such persons are subject to tax under section 1 and section 11, respectively, on their worldwide income.").

Petitioners' procedural arguments likewise are without merit. Petitioners argue that the notice of deficiency is invalid because they allegedly were denied an administrative hearing, and because respondent failed to carry the burden of proof at the administrative level.

The record is unclear as to whether petitioners were provided the opportunity for an administrative hearing. Regardless, it is readily apparent that an administrative hearing in this case would have been futile. Petitioners never disputed the amounts omitted from their tax return. Their positions were certainly not going to be accepted by the Internal Revenue Service. See *Madge v. Commissioner*, T.C. Memo. 2000-370 (rejecting taxpayer's due process claim in a deficiency suit and finding that an administrative hearing would have been futile), affd. per curiam without published opinion ___ F.3d ___ (8th Cir. 2001). As a general rule, this Court will not look behind a deficiency notice to examine the evidence used, the propriety of respondent's motives, or the administrative policy or procedure that informs respondent's determinations. *Pietanza v. Commissioner*, 92 T.C. 729, 735 (1989), affd. without published opinion 935 F.2d 1282 (3d Cir. 1991); *Greenberg's Express, Inc. v. Commissioner*, 62 T.C. 324, 327 (1974); see *Snyder v. Commissioner*, T.C. Memo. 2001-255. A trial before the Tax Court is a proceeding de novo; our determination of a taxpayer's liability is based on the merits of the case and not on the record developed at the administrative level. *Greenberg's Express, Inc. v. Commissioner*, *supra* at 328.

With regard to the burden of proof as it pertains to their liability for the deficiency in their income tax, petitioners' long-winded arguments are misplaced. The resolution of their liability for the deficiency does not depend on which party has the burden of proof. Petitioners have stipulated the amounts omitted from their tax return. There are no material facts in dispute. Since only legal issues remain, the burden of proof is irrelevant. *Nis Family Trust v. Commissioner*, 115 T.C. 523, 538 (2000).

Accordingly, we sustain respondent's deficiency determination.

The second issue for decision is whether petitioners are liable for the section 6662(a) accuracy-related penalty for 1998. Section 6662(a) imposes a 20-percent penalty on underpayments attributable to, among other things, the taxpayer's negligence or disregard of rules or regulations. Negligence is defined to include the "failure to make a reasonable attempt to comply" with the tax laws. Sec. 6662(c). A position with respect to an item is attributable to negligence if it lacks a reasonable basis. Sec. 1.6662-3(b)(1), Income Tax Regs. The term "disregard" includes any careless, reckless or intentional disregard of rules or regulations. Sec. 6662(c); sec. 1.6662-3(b)(2), Income Tax Regs. "'[I]ntentional disregard occurs when a taxpayer who knows or should know of a rule or regulation chooses to ignore its requirements.'" *Cramer v. Commissioner*, 64 F.3d 1406, 1414 (9th Cir. 1995) (quoting *Hansen v. Commissioner*, 820 F.2d 1464, 1469 (9th Cir. 1987)), affg. 101 T.C. 225 (1993).

By failing to report income tax and persistently refusing to acknowledge their tax liability with respect to undisputed revenues, despite self-professed familiarity with the tax laws, petitioners have behaved unreasonably and have intentionally disregarded the rules and regulations. These circumstances, which are not disputed, demonstrate that respondent has satisfied his burden of production under section 7491(c) for his determination of the accuracy-related penalty based on negligence or disregard of rules or regulations. *Higbee v. Commissioner*, 116 T.C. 438, 448-449 (2001). Accordingly, we sustain respondent's determination of the accuracy-related penalty under section 6662(a).

By motion at the conclusion of trial, respondent requested that the Court impose a penalty under section 6673(a). Section 6673(a)(1) authorizes this Court to require a taxpayer to pay to the United States a penalty not in excess of $25,000 if, inter alia, the taxpayer's position in the proceeding is frivolous. A position maintained by a taxpayer is frivolous if it is "contrary to established law and unsupported by a reasoned, colorable argument for change in the law." *Coleman v. Commissioner*, 791 F.2d 68, 71 (7th Cir. 1986). Sanctions are properly imposed when the taxpayer knew or should have known that his claim or argument was frivolous. *Hansen v. Commissioner*, *supra* at 1470; *Nis Family Trust v. Commissioner*, *supra* at 544.

Petitioners knew or should have known that their position was frivolous. Mr. Corcoran has been trained as an accountant and has been employed in that capacity. He testified that he has spent 4 years researching the tax laws. One month before trial, respondent's counsel sent a letter to petitioners clearly outlining the relevant Code sections. He warned petitioners that respondent would move for the Court to impose the section 6673(a) penalty if they continued to pursue their frivolous arguments. Petitioners ignored our precedents and the warnings from respondent's counsel. At trial petitioners introduced numerous inappropriate exhibits, including a copy of a Peanuts Cartoon featuring Snoopy. They have wasted limited judicial and administrative resources. Accordingly, we shall require petitioners to pay a $2,000 penalty to the United States under section 6673(a)

To the extent not herein discussed, we have considered petitioners' other arguments and found them to be meritless.

To reflect the foregoing,

An appropriate order and decision will be entered for respondent.

UNITED STATES TAX COURT
WASHINGTON, D.C. 20217

MARK CHRISTOPHER and, NANCY LOUISE CORCORAN, Petitioners,	)	
v.	)	Docket No. 2947-01
COMMISSIONER OF INTERNAL REVENUE, Respondent.	)	

ORDER AND DECISION

Pursuant to the Court's Memorandum Opinion (T.C. Memo. 2002-18), filed January 18, 2002, it is

ORDERED and DECIDED:

(1) That there is a deficiency in petitioners' 1998 Federal income tax in the amount of $4,155, and that an accuracy-related penalty of $831 shall be imposed pursuant to section 6662(a); and

(2) that respondent's motion for damages, filed September 13, 2001, is granted in that damages are awarded to the United States against petitioner in the amount of $2,000 pursuant to section 6673.

(Signed) NORMAN H. WOLFE

Norman H. Wolfe
Special Trial Judge

Entered: JAN 22 2002

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MARK CHRISTOPHER CORCORAN, et al., Petitioners-Appellants, v. COMMISSIONER OF INTERNAL REVENUE, Respondent-Appellee.	C.A. No. 02-71577 IRS No. 2947-01 Southern District of California, San Diego **ORDER** (Filed Jan. 7, 2003)

Before: **SNEED, SKOPIL** and **FARRIS**, Circuit Judges.

The full court has been advised of the petition for rehearing en banc and no active judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35. Accordingly, the petition for rehearing en banc is DENIED.

UNITED STATES TAX COURT

MARK CHRISTOPHER CORCORAN NANCY LOUISE CORCORAN,	)	
Petitioners,	)	Docket No. 2947-01
v.	)	
COMMISSIONER OF INTERNAL REVENUE,	)	
Respondent,	)	

MOTION FOR DISMISSAL

(Filed Sep. 21, 2001)

(DENIED Jan. 18, 2002)

PETITIONERS were caused undue stress and harm along with receiving abusive process by Timothy Salel when the Petitioners did not receive in a timely manner the agreed upon Stipulation of Facts at least 15 days prior to the U.S. Tax Court trial date of Monday, September 10, 2001. The Petitioners sent their Trial Memorandum and Stipulation of Facts to the U.S. Tax Court and the Respondent before the 15 day time period that they were due. The Petitioners received a draft copy of the stipulation of facts and a binder with the exhibits on the morning of Monday, September 10, 2001 from Timothy Salel. The Petitioners received the final copy of the stipulation of facts on the day of Thursday, September 13, 2001 the actual hearing date from Timothy Salel.

Petitioners believe a felony was committed and wants the U.S. Tax Court and Attorney Timothy Salel to be put on notice that the Internal Revenue Service ALTERED the

petitioners 1998 1040 form. According to 31 CFR Subtital [sic] A, Section 0.205(a) the Internal Revenue Service is not allowed to ALTER a taxpayers return. The Petitioners are requesting that this court pursue this matter and find out who is responsible for Altering their 1998 1040 return.

Attorney Timothy Salel manipulated responses when the Petitioner told Timothy Salel that Petitioner would agree they received monies and NOT WAGES from different places they worked in 1998 over the phone and his first Stipulation of Facts he sent the Petitioners had the manipulated responses on it. The Petitioners talked at least two different times on the phone to Timothy Salel about two weeks before the trial date. When the Petitioner received the Stipulation of Facts with the manipulated responses on it, they sent out a response to Timothy Salel and the U.S. Tax Court to correct it.

WHEREFORE, it is prayed that this motion be granted.

Date: September 13, 2001

By: /s/ Mark C. Corcoran
Mark C. Corcoran

By: /s/ Nancy L. Corcoran
Nancy L. Corcoran